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12 JAN 2007

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In re Application of:	:	
HVOLRIS, Jesper, et al.	:	
U.S. Application No.: 10/560,844	:	DECISION REGARDING
PCT No.: PCT/DK2004/000412	:	SUBMISSION UNDER
International Filing Date: 14 June 2004	:	37 CFR 1.42
Priority Date: 17 June 2003	:	
Attorney's Docket No.: PLOUG6.001APC	:	
For: DEVICE FOR PREVENTING	:	
DISLOCATION OF HIP	:	
ARTHROPLASTY IMPLANTS	:	

This communication is issued in response to applicants' submission on 12 December 2006 of a declaration executed on behalf of deceased inventor John Bogh HANSEN by the deceased inventor's heirs. The submission has been treated as a submission under 37 CFR 1.42.

**BACKGROUND**

On 14 June 2004, applicants filed international application PCT/DK2004/000412. The international application claimed a priority date of 17 June 2003, and it designated the United States. On 23 December 2004, International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 17 December 2005.

On 15 December 2005, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 10 July 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 and the surcharge for filing the oath or declaration later than thirty months after the priority date were required.

On 12 December 2006, applicants filed a response to the Notification Of Missing Requirements (with required three-month extension fee). The response included payment of the required surcharge and a declaration executed by the surviving inventor and on behalf of the deceased inventor by five persons identified as "child and heir" of the deceased inventor.

### DISCUSSION

37 CFR 1.42 states in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Section 409.01(a) of the MPEP states that the application can also be executed by all of the heirs of the deceased inventor, where no legal representative has been appointed or is required to be appointed by law.

37 CFR 1.497(b)(2) states:

If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or 1.47) the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

Pursuant to 37 CFR 1.497(b)(2), the citizenship for **both** the deceased inventor and the legal representative (or heirs) must be identified on the declaration (as well as the mailing address and residence information of the legal representative and all other information required under 37 CFR 1.497).

Here, the declaration filed 12 December 2006 includes the required citizenship, residence, and mailing address information for the persons signing the declaration on behalf of the deceased inventor. However, the declaration does not set forth the citizenship of the deceased inventor. In addition, neither the declaration nor any materials submitted therewith state that the five heirs listed on the declaration are the only heirs of the deceased inventor. Applicants must provide a revised declaration executed by the legal representative of the deceased inventor (or all his heirs) that includes all required information, including the citizenship of the deceased inventor. Such declaration must also make clear on its face, or be accompanied by a statement and/or supporting documentation confirming, that the persons executing the declaration on behalf of the deceased inventor are the only heirs of the deceased inventor.

### CONCLUSION

The declaration filed 12 December 2006 under 37 CFR 1.42 is **REJECTED** without prejudice.

Applicants have **TWO (2) MONTHS** from the mail date this communication to submit a proper response under 37 CFR 1.42 and 1.497. Failure to file a proper and timely response will result in abandonment.

Extensions of time are available under 37 CFR 1.136(a).

A proper response must include a revised declaration executed by the legal representative of the deceased inventor (or all the heirs) that includes all the information required by 37 CFR 1.497 (including the citizenship of the deceased inventor), as well as a statement and/or supporting documentation confirming that the persons executing the declaration on behalf of the deceased inventor are the only heirs of the deceased inventor.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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